

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**MARK FOUNTAIN, #K8577**

**PLAINTIFF**

**vs.**

**CIVIL ACTION No.: 3:22-CV-550-HTW-LGI**

**COMMISSIONER BURL CAIN  
and JOHN/JANE DOES**

**DEFENDANTS**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

BEFORE THIS COURT is the Report and Recommendation of United States Magistrate Judge LaKeysha Greer Isaac [**Docket no. 37**]. In her Report and Recommendation, filed on December 14, 2023, Magistrate Judge Isaac recommended that Defendant Burl Cain's Motion for Summary Judgment [31] and Supplemental Motion for Summary Judgment [35] be granted, and the Plaintiff's lawsuit be dismissed without prejudice. The Defendant filed his Motion for Summary Judgment on September 11, 2023, and his Supplemental Motion on November 20, 2023. Plaintiff had filed no response to the Defendant's Motions prior to December 14, 2023, the date of the Magistrate Judge's Report and Recommendation.

Magistrate Judge Isaac directed the parties to file any objections to her Report and Recommendation within fourteen (14) days. On January 12, 2024, Plaintiff, instead, filed his Response [38] to Defendant's Motion for Summary Judgment and Supplemental Motion for Summary Judgment. This court recognizes that Plaintiff's Response is untimely; however, this court takes Plaintiff's pro se status into consideration, and has considered Plaintiff's response before issuing its ruling.

Based upon the findings and recommendation contained in the Report and Recommendation [**Docket no. 37**], this court finds it well-taken. Magistrate Judge Isaac carefully

considered the submissions of the parties, the record, and relevant law, and crafted a well-versed Report and Recommendation. This court concurs with Judge Isaac's finding that summary judgment is proper, as no genuine dispute of material fact exists concerning Plaintiff's failure to exhaust his administrative remedies prior to initiating this civil action. Although Plaintiff's Response [38] features several requests<sup>1</sup> for an administrative remedy, Plaintiff must, nonetheless pursue his remedies to completion before initiating a civil lawsuit in this federal forum.; therefore, this court hereby ADOPTS the Report and Recommendation of the Magistrate Judge as the ORDER of this court.

IT IS THEREFORE ORDERED THAT Defendant Commissioner Burl Cain's Motion for Summary Judgment [Docket no. 31] and Supplemental Motion for Summary Judgment [Docket no. 35] hereby are **GRANTED**, with the modification that this matter is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies.

**SO ORDERED this the 25th day of April, 2024.**

/s/HENRY T. WINGATE  
**UNITED STATES DISTRICT COURT JUDGE**

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<sup>1</sup> Plaintiff's various submissions reflect different "incident dates". His Complaint [1] alleges that the subject "slip and fall" occurred on or about April 13, 2022. Plaintiff's Complaint filed in response to the Magistrate Judge's order [3] lists the date as April 15, 2023, and his Plaintiff's Response [38] asserts that the incident occurred on or about May 15, 2023.